

SENATE BILL 3770
By McNally

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, Part 4 and Title 55, Chapter 50, to enact the "Tennessee Administrative License Revocation For Implied Consent Violations Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 50, is amended by adding the following as a new part 9:

§55-50-901. This part shall be known and may be cited as the "Tennessee Administrative License Revocation For Implied Consent Violations Act of 2006".

§55-50-902. The general assembly finds and declares that enactment of this part is necessary:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be unwilling to comply with laws governing the privilege of driving by refusing to submit to a test or tests for the purpose of determining the drug or alcohol content of such person's blood; and

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of revocation, and an opportunity for a full hearing as quickly as possible after the revocation becomes effective.

§55-50-903. As used in this part, unless the context clearly requires otherwise:

(1) "Certificate for Driving" means a certificate issued by the department to an individual who does not satisfy the requirements of §55-50-321(c)(1)(C)(i) or (c)(1)(C)(ii);

(2) "Department" means the Tennessee department of safety;

(3) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(4) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;

(5) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license; or

(C) Any nonresident's operating privilege as defined herein;

(6) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(7) "Revocation" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this part; and

(8) "State" means a state, territory, or possession of the United States,

the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

§55-50-904.

(a) The department shall revoke the license or certificate for driving of any person upon its determination that the person refused a test to determine alcohol concentration in a person's blood as provided in §55-10-406.

(b) The department shall make an administrative review and a determination of these facts on the basis of the report of a law enforcement officer required in Section 5, and this determination shall be final unless a hearing is requested under §55-50-911.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this part.

§55-50-905.

(a) Upon a person's refusal to submit to a test or tests for the purpose of determining the drug or alcohol content of such person's blood after being requested to do so and advised of the consequences for failure to do so as provided in §55-10-406, the law enforcement officer, shall, within five (5) working days, forward to the department a report of all information relevant to the enforcement action, including the implied consent form, information which adequately identifies the person refusing, a statement by the officer setting out the probable cause resulting in the request for a test, and a copy of the driver license, copy of the request for hearing form, and receipt for temporary permit. A copy of the completed notice of revocation form, a copy of any completed temporary permit

form and any driver license, or certificate for driving, taken into possession under this section shall be forwarded immediately to the department by the officer.

(b)

(1) The department shall supply the following forms:

- (1) A request for hearing form;
- (2) Receipt for temporary permit form;
- (3) A notice of revocation form; and
- (4) The temporary permit form.

(2) All agencies shall be required to use only forms supplied by the department of safety.

(c) The implied consent form and the forms listed in subsection (b) shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part.

§55-50-906.

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in §55-50-904.

(b) If a person fails to request a hearing, a notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, and any procedure to petition for judicial review.

§55-50-907.

(a) If a person refuses a test to determine alcohol content, the officer, acting on behalf of the department, shall serve the notice of proposed revocation and request for hearing form personally on the arrested person.

(b) When the law enforcement officer serves the notice of proposed revocation, the officer shall take possession of any driver license or certificate for

driving issued by the state which is held by the person. When the officer takes possession of a valid driver license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for forty-five (45) days after its date of issuance. The officer shall also serve a request for hearing form.

(c) Only law enforcement officers who have satisfactorily completed a recruit training program approved by the Tennessee peace officers standards and training commission may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license or certificate for driving and issuing a temporary permit as authorized by this section.

§55-50-908.

(a) The license revocation shall become effective thirty (30) days after the subject person has received the notice of proposed revocation as provided in §55-50-907.

(b) The period of license revocation under this section shall be as follows:

(1) One (1) year, if the person does not have a prior conviction for a violation of §§55-10-401, 39-13-213(a)(2), 39-13-218, 39-13-106, or 55-10-418, in this state, or a similar offense in any other jurisdiction;

(2) Two (2) years, if the person does have a prior conviction for an offense set out in subdivision (b)(1);

(3) Two (2) years, if the department determines that the driver of a motor vehicle involved in an accident in which one (1) or more persons suffered serious bodily injury, violated §55-50-904(a) by refusing to submit to such a test or tests; and

(4) Five (5) years, if the department determines that the driver of a motor vehicle involved in an accident in which one (1) or more persons are killed violated this §55-50-904(a) by refusing to submit to such a test or tests.

(c) Persons who have one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding ten (10) years shall not be eligible for a restricted driver license or restricted certificate for driving during their period of revocation under this part.

(d) Where a license or certificate for driving is revoked under this section, and the person is also convicted on criminal charges arising out of the same occurrence for a violation of §55-10-401, both the revocation under this section and the revocation under §55-10-403 shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed the longer of the two (2) revocation periods.

(e) For purposes of this section:

(1) "Alcohol or drug-related enforcement contacts" include any revocation under this part, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs; and

(2) "Prior conviction" means a conviction for one (1) of the designated offenses, the commission of which occurred prior to the DUI arrest giving rise to the instant implied consent violation.

§55-50-909.

(a) The periods of revocation specified by §55-50-908 are intended to be minimum periods of revocation for the described conduct. No license or certificate for driving shall be restored under any circumstances, and no restricted driver license shall be issued during the revocation period, except as provided in §55-50-907(b) or §55-10-420(d). However, if any criminal charges arising out of the same incident have had final determination rendered by a court, the court may order a restricted license or restricted certificate for driving under the provisions of §55-10-403.

(b) No driving privilege may be restored as a result of a revocation under this part until such person shall provide evidence of financial responsibility, pay a one hundred dollar (\$100) restoration fee and pass the driver license examination as a condition precedent to the restoration of such license or permit.

(c) Any person who has received a notice of proposed revocation under this part shall, prior to the return of any driver license or certificate for driving taken pursuant to §55-50-907, be required to pay to the department an administrative processing fee of twenty-five dollars (\$25.00).

(d) If a driver license or certificate for driving is revoked pursuant to this part, and, at the time of the violation specified in §55-50-904(a), the person was driving the motor vehicle while such person's privilege to do so had been cancelled, suspended or revoked for any reason, the period of revocation imposed pursuant to this part shall be in addition to the period of cancellation, suspension or revocation in effect at the time of the violation specified in §55-50-

904(a), and such person shall not be eligible for a restricted driver license or certificate for driving during both such periods.

§55-50-910.

(a) Upon receipt of the information provided by the law enforcement officer as required in §55-50-905(a), the department shall automatically conduct an administrative review and make a determination pursuant to §55-50-904 of this part.

(b) In such review, the department shall give consideration to all available information. If the department determines by a preponderance of the evidence that the person refused the test and such person was properly advised of the consequences of refusing, the department shall sustain the order of revocation. The failure of the officer to transmit the sworn report required by this section within five (5) days shall not prevent or prohibit the department from accepting such report at a later time and utilizing it in the revocation of a driver license as provided in this part. If the evidence does not support such determination, the department must immediately rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under §55-50-911 of this part.

(c) The department shall make a determination upon administrative review at least five (5) days prior to the effective date of the revocation order. If the department is unable to make a determination within the time limit specified, it shall stay the revocation pending such determination. If the department rescinds the revocation, the department shall return the person's driver license or certificate for driving.

§55-50-911.

(a) Any person who has received a notice of proposed revocation from the officer may, within ten (10) days of receipt of notice, make a written request for a hearing. If the person's driver license or certificate for driving has not been previously surrendered, it must be surrendered at the time the request for hearing is made. A request for a hearing submitted within ten (10) days of the receipt of the notice of revocation from the officer will stay the license or certificate for driving revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to make a final ruling on the issue.

(d) The sole issues at the hearing shall be whether by a preponderance of the evidence the person refused a chemical analysis test and whether the person was properly advised of the consequences for refusal to take such test as provided in §55-10-406. If the presiding hearing officer finds the affirmative of this

issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy shall be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(h) The department shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this part, when the department subpoenas the governmental agency's representative. Funds for such payments shall be paid from the expendable receipts collected by the department under §55-12-129.

§55-50-912.

(a) Within thirty (30) days of the issuance of the final determination of the department following a hearing pursuant to §55-50-911, a person aggrieved by the determination shall have the right to file a petition in the chancery court in Davidson County or in the chancery court for the county where the arrest or offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record without taking additional testimony.

If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

§55-50-913. The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall govern the administrative hearing and judicial review provided in this part.

§55-10-914. For the purpose of implementing the provisions of this part, the commissioner of safety is directed to apply for all applicable federal funding.

SECTION 2. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following new section:

§55-10-420.

(a)

(1) Any person who drives a motor vehicle in this state is deemed to have given consent to a test or tests for the purpose of determining the alcoholic content of that person's blood, a test or tests for the purpose of determining the drug content of such person's blood, or both such tests. However, no such test or tests may be administered pursuant to this section, unless conducted at the direction of a law enforcement officer having reasonable grounds to believe such person was driving while under the influence of alcohol, a drug, any other intoxicant or any combination of alcohol, drugs, or other intoxicants as prohibited by §55-10-401, or was violating the provisions of §§39-13-106, 39-13-213(a)(2) or 39-13-218. For the results of such test or tests to be admissible as evidence, it

must first be established that all tests administered were administered to the person within two (2) hours following such person's arrest or initial detention.

(2) Any physician, registered nurse, licensed practical nurse, clinical laboratory technician, licensed paramedic, licensed emergency medical technician approved to establish intravenous catheters, or technologist, or certified or nationally registered phlebotomist who, acting at the written request of a law enforcement officer, withdraws blood from a person for the purpose of conducting either or both such tests, shall not incur any civil or criminal liability as a result of the withdrawing of such blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the health care professionals listed in this subdivision (a)(2) incur any civil or criminal liability as a result of the act of withdrawing blood from any person, except for negligence.

(3) Any law enforcement officer who requests that the driver of a motor vehicle submit to either or both tests authorized pursuant to this section, for the purpose of determining the alcohol or drug content, or both, of the driver's blood, shall, prior to conducting either test or tests, advise the driver that refusal to submit to the test or tests will result in the suspension and immediate confiscation of the driver's operator's license, and, if such driver is driving on a license that is cancelled, suspended or revoked because of a conviction for vehicular assault under §39-13-106, vehicular homicide under §39-13-213, aggravated vehicular homicide under §39-13-218, or driving under the influence of an intoxicant under §55-10-401, that the refusal to submit to such test or tests is a criminal offense and will, in addition, result in a fine and mandatory jail or workhouse sentence. The department of safety, acting pursuant to title 55,

chapter 50, part 9, shall not have the authority to suspend the license of a driver who refused to submit to either or both tests, if the driver was not advised of the consequences of such refusal.

(4)

(A) If such person, having been placed under arrest and then having been requested by a law enforcement officer to submit to either or both such tests, and having been advised of the consequences for refusing to do so, refuses to submit, the test or tests to which the person refused shall not be given, and such person's driver license shall be confiscated, and a notice of proposed revocation shall be served on the person as provided in §55-50-907(b). The determination as to whether a driver violated the provisions of this subsection (a) shall be made by the department of safety in accordance with the provisions of title 55, chapter 50, part 9.

(b)

(1) It is an offense for a driver to violate the provisions of subsection (a) by refusing a chemical test while driving on a license that was revoked, suspended or cancelled because of a conviction for vehicular assault under §39-13-106, vehicular homicide under §39-13-213, aggravated vehicular homicide under §39-13-218, or driving under the influence of an intoxicant under §55-10-401.

(2) Any person who violates the provisions of this subsection shall be charged by a separate warrant or citation that does not include any charge of violating §55-10-401 that may arise from the same occurrence.

(3) A violation of this subsection (b) is a Class A misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), and a mandatory period of imprisonment of five (5) days, which shall be served consecutively, day for day, and which sentence cannot be suspended.

(c) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering that person incapable of refusal, shall be subjected to the test or tests as provided for by §§55-10-405 - 55-10-412, but the results thereof shall not be used in evidence against that person in any court or before any regulatory body without the consent of the person so tested. The person's refusal to release the evidence so obtained shall be considered the same as refusing to take a chemical test upon request and shall result in the suspension and immediate confiscation of the person's driver license pursuant to title 55, chapter 50 part 9, and thus such refusal of consent shall give such person the same rights of hearing and determinations as provided for conscious and capable persons in this section and title 55, chapter 50 part 9.

(d)

(1) Except as provided in §55-50-908(c), a person whose license has been suspended by the court pursuant to title 55, chapter 55, part 9, may apply to the court in the county where the person resides or to the court in the county where the violation occurred for a restricted license. The judge of the court may order the issuance of a restricted license allowing the person to operate a motor vehicle for the purpose of:

(A) Going to and from and working at the person's regular place of employment;

(B) Going to and from a court-ordered alcohol safety program;

(C) Going to and from a college or university in the case of a student enrolled full time in such college or university; and

(D) Going to and from a scheduled interlock monitoring appointment.

(2) Such order shall state with all practicable specificity the necessary time and places of permissible operation of a motor vehicle. The person may obtain a certified copy of the order, and within ten (10) days after it is issued, present it, along with an application fee of twenty dollars (\$20.00), to the department of safety, which shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until such time as the restricted license is issued, a certified copy of the order may serve in lieu of a motor vehicle operator's license. Any restricted license issued under the provisions of this section shall be subject to renewal in the same manner as other motor vehicle operator's licenses.

(e) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions for aggravated assault or homicide by the use of a motor vehicle only, of any chemical analysis of the alcoholic or drug content of the defendant's blood which has been obtained by any means lawful without regard to the provisions of this section.

(f) Provided probable cause exists for criminal prosecution for the offense of driving under the influence of an intoxicant under §55-10-401, nothing in this section shall affect the admissibility into evidence in a criminal prosecution of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

SECTION 3. Effective January 1, 2007, §55-10-406 is amended by deleting it in its entirety.

SECTION 4. Effective January 1, 2007, all references in Tennessee Code Annotated to §55-10-406 shall be deemed references to §55-10-420 created by this act, and the code commission is authorized to change such references as the appropriate new volumes and supplements are printed from time to time.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. For purposes of employing any necessary personnel, acquiring facilities, equipment and otherwise implementing the provisions of this act shall take effect July 1, 2006. Sections 1 and 2 of this act shall take effect on January 1, 2007.